of it (a) by the time the respondents' next shipment of cement arrived and (b) if it arrived in about a couple of months.

Next we were asked to hold that there is an implied term that the respondents were under an obligation to do nothing to prevent the arrival of their next shipment, about a couple of months later, upon which the appellant's right depended. I think it is abundantly clear that no such obligation can be implied. It appears from the notes of evidence that at some time there was a glut on the market. It is not clear from the notes when the market began to fall, and we are told that at the time when the contract was made the market was not overstocked. But the appellants were placing this order for 1,200 tons of cement without having found a buyer for it, and it was to be delivered with a further 1,000 tons from a previous order, making 2,200 tons in all. If they were unable to dispose of it before the respondents' next shipment arrived, their chances of disposing of it after it arrived, when the market would be further stocked by the cement from the next shipment, would be considerably reduced. It seems to me that nothing is less likely than that the appellants desired to impose upon the respondents a contractual obligation to secure the arrival of the next shipment of cement in two months' time. But if it had to arrive they wanted to protect themselves against the possibility of being caught with the 1,200 tons still on their hands. We have no right to imply into this contract the obligation which is contended for unless we can say that it is a necessary implication that the parties must have intended that obligation to exist. In the light of the facts I think that such an implication is in no way reasonable; still less is it necessary.

Lastly it was argued that the arrival of the next shipment was a condition precedent to the appellants' right to have the cement taken back, and that although there may have been no obligation on the part of the respondents to see that the condition was fulfilled there was an obligation on them to see that the appellants were not damnified if the condition was not fulfilled. I find some difficulty in appreciating the distinction between this proposition and the previous one. You may call it a condition precedent, but it was a condition which only the respondents could fulfil. If they are to be liable because it was not fulfilled that seems to mean in effect that they were under an obligation to fulfil it, and we are back where we were. The principle which is contained in the cases cited on behalf of the appellants is that where one party to a contract is prevented from performing it by the act of the other party, he is not liable for that default. But the principle has no application in this case for two reasons. Firstly, it was not a term of the contract that the defendants were under an obligation to secure the arrival of the next shipment, and it is quite clear that no such obligation can be implied. Secondly, there was in this case no obligation on the part of the appellants which they were prevented from performing by the respondents' failure to bring the next shipment. The arrival of the next shipment about a couple of months later was an event upon which the appellants' right depended, and it did not take place.

In my opinion the appeal must be dismissed with costs.

Mr. Justice Gordon-Smith did not write any judgment but concurred with Evans and Brown JJ.

Appeal Dismissed.

M. ISMAIL v. MAHADEO YADAU.

[Orig. Civ. Juris. (Brown, J.) August 23, 1949]

[Singapore — Civil Suit No. 209 of 1949]

Landlord and Tenant — Who is a lodger.

Held, a person who occupies a somewhat restricted space in a room which he shares with others and pays rent is only a lodger.

CIVIL SUIT.

Eric Choa for the Plaintiff.

S. Shunmugam for the Defendant.

The facts of the case and the arguments sufficiently appear from the Oral Judgment of Brown, J. :—

In para. 3 of the Defence it is stated that since August 1947 the defendant has been residing in the front portion of the first floor of No. 10 Rowell Road *as one of the sub-tenants of the plaintiff* along with one Ram Naresh and six others with the knowledge and consent of the plaintiff. Thus his case upon his pleading is that he is a sub-tenant of the plaintiff. But his case in Court was that he was a sub-tenant of Ram Naresh.

The plaintiff is the tenant of the whole house. In March 1947 he sub-let the front portion of the 1st floor to Ram Naresh. The defendant's case is that in July 1947 Ram Naresh sub-sub-let a small part of this portion of the 1st floor to him. The "portion of

the 1st floor" which the plaintiff sub-let to Ram Naresh is a hall some 25′ x 12′. Ram Naresh used this hall, to the knowledge of the plaintiff but in spite of a protest by him, for taking in lodgers. Some of the lodgers were temporary, who were passing through Singapore on their way to and from India. Some 5 or 6 others, of whom the defendant was one, were (according to the defendant) permanent. There were no partitions in this hall. The temporary lodgers slept on the floor. The permanent ones enjoyed the amenities of a charpoy and a box. It is the somewhat restricted space occupied by his charpoy and his box which the defendant says he holds on a contract of subtenancy (according to his pleading) or of sub-subtenancy according to his case in Court.

I can see no evidence whatever — and not even in the defendant's own testimony — of any such contract either between the defendant and the plaintiff or between the defendant and Ram Naresh. Of any contractual relationship with the plaintiff there is no suggestion (except in his pleading). And if there was any contractual relationship with Ram Naresh it was that of a lodger (one of many). He appears to have paid Ram Naresh $1.50 for the month of August 1947. There is no evidence of what further sums he paid (if any). I shall assess the mesne profits at $1.50 per month.

There must be judgment for the plaintiff for :—

(1) Possession as claimed, possession to be given on or before the 31st August;

(2) $12.00 mesne profits, at $1.50 per month for 8 months;

(3) Costs.

Judgment for the plaintiff.

TAN KEE GUAN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J., Brown and Gordon-Smith, JJ.) September 1, 1949]

[Singapore — Mag. Appl. No. 59 of 1949]

Criminal Procedure Code, s. 306(3) — Consideration of the legality or propriety of an order for forfeiture — Singapore Essential Regulations, Regulation 81 — Several offences arising out of the same subject matter — Punishment — Venue of Trial.

Where the penalties provided for breach of any law include the forfeiture of goods concerned in the crime, it is an improper exercise of the discretion vested in a District Judge to order forfeiture when the value of the goods to be forfeited is out of all proportion to the maximum sentence which he is entitled to inflict. In cases where the prosecution intend to press for a severe penalty, including the forfeiture of goods which far exceed the amount of the fine which may be imposed by a District Court, then the trial should be before the Supreme Court. This is particularly so where, as in the case of breaches of the Essential Regulations, higher penalties may be imposed by the Supreme Court than in the District Court.

Where an accused person is charged with several offences arising out of the same subject matter, then each separate and distinct offence, if they are really separate and distinct offences, should be punished separately.

CRIMINAL REFERENCE TO FULL COURT.

D. K. Walters (*Wee Chong Jin* with him) for Appellant.

Simpson (D. P. P.) for the Crown.

The facts sufficiently appear from Judgment of the Court given by :—

Brown, J. : — This appeal was reserved under the provision of section 306(3) of the Criminal Procedure Code for our consideration of the legality or propriety of the order for forfeiture. The appellant was convicted by the learned District Judge upon four charges. The maximum sentence (apart from the forfeiture) which it would have been competent for him to impose on the first charge was 6 months' imprisonment or a fine of $1,000.00 or both (G. N. No. S 81 of the Gazette Supplement dated 26th July 1946). Upon the remaining three charges the maximum sentence was in each case a fine of $1,000.00. He imposed a fine of $500.00 on the first charge, and taking the view that all 4 charges were related he imposed a nominal fine of $10.00 on each of the remaining three. But in the case of the first charge, which was under section 3 of the Prohibition of Exports Order, 1946, he availed himself of the amendment to Regulation 81 of the Singapore Essential Regulations, which was made by G. N. No. S 276 of the Gazette Supplement dated 12th August 1947, and, in addition to the fine of $500.00, he ordered the goods to be forfeited. It is not disputed that the value of the sulphate of ammonia, which was thus ordered to be forfeited, was $70,000.00.

Mr. Walters first contested the legality of the order for forfeiture upon the ground that the amendment made by G. N. No. S 276 of 1947 was *ultra vires*. He said that it was contrary to the provision of Magna Carta. The answer to that can only be that emergency legislation sometimes is. In order to meet the emergency, extraordinary powers of legislation are conferred upon certain authorities, and we can only ask ourselves if the authority which made the amendment contained in G. N. No. S 276 of 1947 was acting within the legislative powers conferred upon him by the Singapore Essential Regulations Proclamation (G.